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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. WILLIE AMBROS NORMAN, Defendant and Appellant.	C085404 (Super. Ct. No. 16FE019997)

A jury found defendant Willie Ambros Norman guilty of assault with a hatchet and false imprisonment. The trial court sentenced him to an aggregate term of four years in state prison. On appeal, defendant contends the trial court erred in failing to conduct a more thorough inquiry into defendant's competence for self-representation before granting his *Faretta*[1] motion. We conclude the trial court conducted an adequate inquiry into defendant's competence and acted within its discretion when it found defendant competent to represent himself. No further inquiry was required. Accordingly, we affirm the judgment.

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[1] *Faretta v. California* (1975) 422 U.S. 806 [45 L.Ed.2d 562] (*Faretta*).

FACTUAL AND PROCEDURAL BACKGROUND

On October 19, 2016, defendant was arraigned on numerous charges, a public defender was appointed as counsel, and bail was set at $50,000. On December 12, 2016, defense counsel expressed doubt as to defendant's competency to stand trial pursuant to Penal Code section 1368.[2] The trial court (Judge Sapunor) suspended the proceedings and, pursuant to section 1369, subdivision (a), appointed Janice Y. Nakagawa, Ph.D. to evaluate defendant's competence to stand trial.

In January 2017 defense counsel requested a second evaluation. The trial court (Judge Román) thus appointed Luigi Piciucco, Ph.D. to conduct a second section 1369 evaluation. Both doctors filed their reports with the court on February 10, 2017, and both doctors found defendant competent to stand trial.

After reviewing the doctors' reports, Judge Román concluded defendant was competent to stand trial. Criminal proceedings were reinstated accordingly.

Prior to April 27, 2017, defendant made a *Marsden*[3] motion; he withdrew that motion following a hearing in front of Judge McCormick. Defendant subsequently made a second *Marsden* motion, which the trial court denied on May 22, 2017.

After Judge Twiss denied his *Marsden* motion, defendant made an oral motion under *Faretta* to represent himself. Judge Twiss advised defendant against representing himself, noting that defendant was facing a significant amount of time in prison and two strike convictions. Judge Twiss set that motion for hearing on May 24, 2017.

On May 24, 2017, Judge Koller heard defendant's *Faretta* motion. Judge Koller told defendant it was "really not a good idea" to represent himself. Defendant was undaunted: "That's what I've been hearing, but I'm still locked up, and I have no other

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[2] Undesignated statutory references are to the Penal Code.

[3] *People v. Marsden* (1970) 2 Cal.3d 118.

choice." Judge Koller proceeded to give defendant numerous admonitions about self-representation: defendant's exposure was 10 years six months in state prison, he would be opposed by a "trained prosecutor," the court could not help him, he must comply with the rules of evidence and procedure, and he would remain "on lockdown" and would have "specific time" in which he would do research in the jail's law library. Defendant acknowledged the admonitions verbally and signed the written "record of *Faretta* warnings."

When asked whether he had any legal background or training, defendant said he had "Judges and lawyers" in his family. Defendant repeatedly claimed his innocence, saying he was being "railroaded," that he "got trapped in the legal system over lies and fabricated stories of -- of a female that was off her psych meds or something like that," and his innocence was apparent "on the four corners of the paper." He told the court that he knew how to do legal research but because he had been on "T-sep" lockdown for eight months he was "having a hard time."

Judge Koller granted defendant's motion to represent himself. She noted "for the record" that she reviewed the section 1369 reports. Reviewing those reports, Judge Koller did not "see anything . . . that would suggest that [defendant] would not otherwise be like anyone else representing himself. I say it that way because I don't think anybody should represent themselves.

"THE DEFENDANT: Yes, ma'am.

"THE COURT: I don't think it's a good idea, but there isn't anything in the records that I've reviewed that suggest that you wouldn't be as capable as anybody else." Judge Koller then discussed with defendant the role of the pro. per. coordinator in the jail and the discovery defendant would soon be receiving. Defendant continued to argue about being "stuck" in isolation and Judge Koller told him that had "nothing to do with [his] case, . . ." Defendant raised concerns about having his right to a speedy trial violated and former trial counsel advised the court that no waiver had ever been made.

Judge Koller told defendant she would provide him with all the court's minute orders, which collectively demonstrated there was no time waiver. Defendant then asked for the trial to be set out for a month. Judge Koller set the trial for three weeks out, and a trial readiness conference for the week prior.

On July 6, 2017, the People filed an amended information, charging defendant with making criminal threats (§ 422—count one), assault with a hatchet (§ 245, subd. (a)(1)—count two), assault with a katana sword (§ 245, subd. (a)(1)—count three), false imprisonment with the use of a weapon (§§ 236, 12022, subd. (b)(1)—count four), child endangerment (§ 273a, subd. (a)—counts five & six), and misdemeanor disabling a telephone (§ 591.5—count seven).

The jury found defendant not guilty on counts three and seven, and they hung on counts one, five, and six. The jury found defendant guilty of assault with a hatchet and felony false imprisonment. They also found true the allegations that he used a deadly weapon to commit those crimes. On the People's motion, the trial court dismissed counts one, five, and six. The trial court subsequently sentenced defendant to four years in state prison.

DISCUSSION

Defendant argues the trial court erred in failing to conduct a more thorough inquiry into his competence for self-representation before granting his *Faretta* motion. Specifically, he contends that although he does not have a severe mental illness and was rational during the *Faretta* hearing, his conduct before and after the hearing demonstrates his incompetence. We are not persuaded.

A. Legal Principles

Defendants in criminal cases have a federal constitutional right to represent themselves. (*Faretta*, *supra*, 422 U.S. 806.) This right is not absolute. In *Indiana v. Edwards* (2008) 554 U.S. 164 [171 L.Ed.2d 345], the United States Supreme Court held that states may, but need not, deny self-representation to defendants who, although

competent to stand trial, lack the mental health or capacity to represent themselves at trial—persons the court referred to as "gray-area defendants." (*Id*. at p. 174.) Those "gray-area defendants" are those "competent enough to stand trial . . . but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." (*Id*. at p. 178.) Under *Edwards*, competence to represent oneself at trial is the ability "to carry out the basic tasks needed to present [one's] own defense without the help of counsel." (*Id*. at pp. 175-176.)

The rule of *Edwards* was extended to California courts in *People v. Johnson* (2012) 53 Cal.4th 519 (*Johnson*). California courts have discretion to deny self-representation to so-called gray-area defendants " 'in those cases where *Edwards* permits such denial.' " (*People v. Gardner* (2014) 231 Cal.App.4th 945, 956 (*Gardner*).) "[T]he appropriate standard for trial courts to use in deciding whether to exercise their discretion to deny self-representation 'is simply whether the defendant suffers from a severe mental illness to the point where he or she cannot carry out the basic tasks needed to present the defense without the help of counsel.' " (*Gardner*, at p. 956, citing *Johnson*, at p. 530.) Nonetheless, the court cautioned that "[s]elf-representation by defendants who wish it and validly waive counsel remains the norm and may not be denied lightly." (*Johnson*, at p. 531.)

The determination of whether a defendant is competent to represent him or herself is committed to the trial court's sound discretion and will not be disturbed absent an abuse of that discretion. (*People v. McArthur* (1992) 11 Cal.App.4th 619, 627.) As the trial judge is typically in the best position to determine the defendant's competency, we defer to the trial court's determination and uphold it so long as it is supported by substantial evidence. (*Johnson, supra*, 53 Cal.4th at pp. 531-533.)

B. Analysis

Defendant contends "the trial court erred in permitting [him] to represent himself without an adequate inquiry into his competence for self-representation." We find substantial evidence supports the trial court's decision.

Defendant is explicitly not arguing that he has "any mental illness as such [that] rendered [him] incompetent to represent himself." This effectively eviscerates any argument that the trial court abused its discretion in granting his motion because a defendant who is found competent to stand trial is competent to represent himself *unless the defendant suffers from* " 'a severe mental illness' " that precludes him or her from doing so. (*Gardner, supra,* 231 Cal.App.4th at p. 956, citing *Johnson, supra*, 53 Cal.4th at p. 530.) It is undisputed defendant was found competent to stand trial. In short, there was no evidence presented at the hearing that defendant suffered " 'from a severe mental illness to the point where he . . . cannot carry out the basic tasks needed to present the defense without the help of counsel.' " (*Gardner*, at p. 956, citing *Johnson*, at p. 530.)

Furthermore, the evidence available to Judge Koller at the *Faretta* hearing was sufficient to support a finding of competence. The *Faretta* hearing was Judge Koller's first interaction with defendant, prior hearings having been presided over by different judges. As defendant acknowledges, he sounded "fairly rational" at the *Faretta* hearing. Defendant may have been overly confident in his abilities and determined to prove he had been railroaded and he was innocent, but defendant cites no authority to support a finding that these beliefs are unusual in a defendant or that they provided evidence to Judge Koller that defendant could not carry out the basic tasks of self-representation. In addition to her own observations of defendant, Judge Koller had two section 1369 reports, both of which found defendant competent to stand trial.

Defendant nevertheless contends the mere fact of the section 1368 evaluation should have been a "warning flag," requiring Judge Koller to conduct a further inquiry into his competence, including a review of defendant's prior *Marsden* motion. The

court's obligation to conduct further inquiry into defendant's ability to represent himself, however, is triggered only by the court's concern that defendant is not competent to represent himself. (See *People v. Mickel* (2016) 2 Cal.5th 181, 208 [trial courts required to inquire into a defendant's mental competence on a *Faretta* motion only when the court has doubts about the defendant's competence].) Defendant cites no authority for the proposition that a section 1368 evaluation resulting in two section 1369 reports, both of which find a defendant competent to stand trial, trigger a court's duty to conduct further inquiry into a defendant's competence to represent him or herself. Particularly when, as here, defendant's conduct at the hearing does not indicate he may be suffering from a " 'severe mental illness' " that would prevent him from carrying out "the basic tasks needed" to represent himself. (*Gardner, supra*, 231 Cal.App.4th at p. 956, citing *Johnson, supra*, 53 Cal.4th at p. 530.)

Defendant further argues that his conduct after the *Faretta* hearing demonstrated the trial court abused its discretion in finding him competent to represent himself. In reviewing a trial court's determination of competence, however, we review only the evidence before the court at the *Faretta* hearing; we do not consider later developed evidence.[4] (*People v. Welch* (1999) 20 Cal.4th 701, 739.) Such later developed evidence is relevant only to whether a trial court abuses its discretion in refusing or failing to revoke a defendant's self-representation after the *Faretta* hearing. (See *People v. Weber* (2013) 217 Cal.App.4th 1041, 1060 [trial court had discretion to revoke defendant's right to self-representation during trial]; see also *People v. Miranda* (2015) 236 Cal.App.4th

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[4] Defendant argues we are required to review the entire record de novo. The case on which he relies, however, addresses whether a defendant's waiver of the right to counsel is valid, not a finding of competence. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1070 ["On appeal, we examine de novo the whole record -- not merely the transcript of the hearing on the *Faretta* motion itself -- to determine the validity of the defendant's waiver of the right to counsel. [Citation.]"].) We do not conduct de novo review on questions of the trial court's discretion.

978, 988-989 [assuming defendant has a " 'right' " to have court revoke self-representation if it becomes aware of defendant's serious mental illness].) Defendant did not raise that argument on appeal.

Defendant also suggests, in passing, that the *Faretta* warnings may not have been sufficient "because although he acknowledged the court's warnings to follow rules and orders, he simply could not absorb them." If this is intended to be a claim that defendant was not competent to waive his right to counsel, because he could not understand the warnings, that claim fails. The competency a defendant needs to waive the right to counsel is the same as the competency needed to stand trial. (*People v. Weber, supra,* 217 Cal.App.4th at pp. 1051-1052.) It is undisputed that defendant was found competent to stand trial.

In sum: "[s]elf-representation by defendants who wish it and validly waive counsel remains the norm and may not be denied lightly." (*Johnson, supra,* 53 Cal.4th at p. 531.) On this record, we find the trial court acted within its discretion in finding defendant competent to represent himself at trial without further inquiry.

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

BLEASE, J.

ROBIE, J.